

How your self-managed super fund is regulated

This publication explains how we work with you and others to regulate your self-managed super fund (SMSF).

OUR COMMITMENT TO YOU

We are committed to providing you with accurate, consistent and clear information to help you understand your rights and entitlements and meet your obligations. If you feel that this publication does not fully cover your circumstances, or you are unsure how it applies to you, you can seek further assistance from us.

We regularly revise our publications to take account of any changes to the law, so make sure that you have the latest information. If you are unsure, you can check for more recent information on our website at ato.gov.au or contact us.

This publication was current at **March 2013**.

FINDING THE RIGHT INFORMATION

- *Setting up a self-managed super fund* (NAT 71923) – provides basic information about how to set up an SMSF.
- *Running a self-managed super fund* (NAT 11032) – highlights your responsibilities and obligations as a trustee when operating your SMSF.
- *Paying benefits from a self-managed super fund* (NAT 74124) – is designed to assist trustees who are required to make payments out of an SMSF.
- *Winding up a self-managed super fund* (NAT 8107) – details the process you need to follow to wind up an SMSF.

To obtain a copy of our publications or for more information:

- phone us on **13 10 20** between 8.00am and 6.00pm, Monday to Friday
- phone our publication ordering service on **1300 720 092**
- write to us at

Australian Taxation Office
PO Box 3100
PENRITH NSW 2740

If you do not speak English well and need help from the ATO, phone the Translating and Interpreting Service on **13 14 50**.

If you are deaf, or have a hearing or speech impairment, phone the ATO through the National Relay Service (NRS) on the numbers listed below:

- TTY users, phone **13 36 77** and ask for the ATO number you need
- Speak and Listen (speech-to-speech relay) users, phone **1300 555 727** and ask for the ATO number you need
- internet relay users, connect to the NRS on relayservice.com.au and ask for the ATO number you need.

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COMMISSIONER'S FOREWORD

Australia's superannuation system is designed to help and encourage people to achieve a higher standard of living in retirement than would be possible from the age pension alone.

Safeguarding retirement income should be a shared objective for everyone in the super industry including trustees, auditors, professional and industry bodies, as well as government agencies such as the Australian Taxation Office (ATO), the Australian Prudential Regulation Authority (APRA), the Australian Securities & Investments Commission (ASIC) and the Department of Human Services (DHS).

Self-managed super funds (SMSFs) are playing an increasingly important role in the super system. As the regulator, we are responsible for ensuring that SMSFs maintain a high level of compliance with super and tax laws.

The rules contained in the super legislation ensure that a trustee's desire for flexibility and control over the management of their SMSF is matched with a strong commitment to protecting their fund's asset base, so it is able to provide members with greater financial security in retirement.

In this booklet we outline how SMSFs are regulated and the role that we and other government agencies have. We also explain the roles of auditors and other super professionals as well as the role of a trustee. We do this to emphasise that ensuring the integrity of the super system is a shared responsibility.

Super is one of Australia's greatest success stories, and SMSFs play a big part in that story.



A handwritten signature in black ink that reads "Chris Jordan". The signature is stylized and cursive, with a long horizontal line extending from the bottom of the name.

Chris Jordan
Commissioner of Taxation

SMSFs are one way of saving for your retirement. The members of an SMSF are also the trustees.

Like other super funds, SMSFs are a way of saving for your retirement. Generally, the main difference between an SMSF and other types of funds is that members of an SMSF are the trustees or directors of a company that acts as the trustee. This means the members of the SMSF run it for their own benefit.

SMSFs are not suitable for everyone and you should think carefully before deciding to set one up. It is a major financial decision and you need to have the time and skills to do it. There may be other, better options for your super savings.

If you are considering an SMSF for your super savings, *Thinking about self-managed super* (NAT 72579) provides you with some practical information. Licensed financial advisers, tax agents and accountants can also help you understand what is involved.

If you decide that an SMSF is the appropriate vehicle for your super savings, you need to ensure the fund is set up and maintained correctly so that it is eligible for tax concessions, can pay benefits and is as easy as possible to administer. *Setting up a self-managed super fund* (NAT 71923) provides you with some basic information on this and the steps you need to follow to set up the fund correctly.

Once your SMSF is established, you as trustee control the investment of the contributions and fund earnings. Your SMSF must have a trust deed that forms part of the governing rules for operating the fund. You must also prepare and implement an investment strategy and ensure that it is reviewed regularly. There are rules and regulations that you must follow to ensure the fund's assets are protected to provide benefits in retirement.

While contributions are being made to the fund it is considered to be in the accumulation phase. The publication *Running a self-managed super fund* (NAT 11032) explains the responsibilities and obligations of trustees operating an SMSF.

When one or more members retire, you as trustee need to understand and follow the requirements of the law and regulations governing the payment of benefits. The payment standards contained in the legislation and regulations, the sole purpose test and the preservation rules ensure that money in the fund is paid to members in the appropriate manner. *Paying benefits from a self-managed super fund* (NAT 74124) is designed to assist trustees who are required to make payments out of their SMSF. It also provides information for funds that have members in both the accumulation and retirement phase. It is important to note that the rules and regulations that apply to funds in the accumulation phase continue when one or more members retire; however additional rules apply to the retirement phase.

You should continually reassess the circumstances of the fund and each individual member to determine whether an SMSF is still the most appropriate option for your retirement savings. In some cases you may find that you no longer have the capacity to deal with the complexity or the time required to manage your SMSF.

You may decide that it is not cost-effective to continue to run your own fund. Depending on the circumstances it may be necessary to transfer member benefits to another complying super fund.

Other reasons why you might wind up your SMSF include when all members have left the SMSF (for example, they have rolled over their benefits to another fund or have died) or all the benefits have been paid out. *Winding up a self-managed super fund* (NAT 8107) details the process you need to follow to wind up your fund.

02

SUPER REFORM

The government has supported many of the Super System Review's recommendations to reform super, including the SMSF sector.

A number of these measures are aimed at improving the operation, efficiency and integrity of the SMSF sector and are relevant to the way you run your SMSF. Some of these measures have been implemented and are included in this publication; others await legislative change and will be introduced in the future.

➤ For more information, refer to 'News' on the self-managed super funds home page at ato.gov.au/smsf

We regulate SMSFs. They are one of the retirement saving options available within the super system.

Laws to regulate the super system are made by the Australian Parliament and administered by four key government agencies:

- Australian Taxation Office (ATO)
- Australian Prudential Regulation Authority (APRA)
- Australian Securities & Investments Commission (ASIC)
- Department of Human Services (DHS).

AUSTRALIAN TAXATION OFFICE

We play a big part in the super system. We have an important role regulating SMSFs in accordance with super laws and administering the tax system as it applies to super funds and their members. We also play a key role in monitoring the performance of SMSF auditors.

As the registrar of the Australian Business Register (ABR), we are responsible for maintaining the ABR. We register all super funds and corporate trustees, including APRA-licensed trustees and issue them with an Australian business number (ABN). We also administer and maintain Super Fund Lookup (SFLU).

We provide an SMSF member verification service to APRA-regulated funds. APRA-regulated funds can use this service when processing requests from their members to rollover or transfer their super to an SMSF.

We assist individuals to search for lost and unclaimed super and we administer government super programs such as co-contributions for low income earners.

We also assist employees who have not received appropriate employer super support to obtain their correct entitlements and ensure that employers meet their obligations to pay compulsory super contributions for eligible employees.

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

APRA is the prudential regulator of the Australian financial services industry. It oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance and friendly societies. It supervises approved deposit funds, pooled superannuation trusts and regulated super funds other than SMSFs. These include small funds, employer sponsored funds as well as retail and industry funds.

APRA also acts as the national statistical agency for the Australian financial sector and plays an important role in preserving the integrity of Australia's retirement incomes policy and in protecting the retirement income of Australian super fund members.

➤ For more information about APRA, visit apra.gov.au

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

ASIC regulates Australian companies, which includes corporate trustees of SMSFs and other super funds. It also regulates financial markets, financial services organisations and professionals who deal and advise in investments, super, insurance, deposit taking and credit. ASIC licenses and monitors financial services businesses to ensure that they operate efficiently, honestly and fairly so that consumers are protected. These businesses typically deal in super, managed funds, shares and company securities, derivatives and insurance.

ASIC is responsible for registering companies, managed investment schemes, auditors and liquidators. From 1 July 2013 it will be compulsory for auditors of SMSFs to be registered with ASIC and to have an SMSF Auditor Number (SAN). ASIC will manage the registration process and set competency standards.

As the government agency with overall responsibility for financial literacy, ASIC runs the MoneySmart website, which is one of the key initiatives in the National Financial Literacy Strategy and offers free independent guidance to assist consumers and investors, including SMSF trustees.

➤ For a wide range of investment tips and safety checks for consumers and investors, refer to the ASIC consumer website at moneysmart.gov.au

DEPARTMENT OF HUMAN SERVICES

DHS provides access to social, health and other payments and services. It also assesses applications from super fund members, including SMSF members, for the early release of super benefits on compassionate grounds.

➤ For more information, search for early release of superannuation at centrelink.gov.au

An SMSF must elect to be regulated by us and abide by the super laws to be a complying super fund. Complying super funds are taxed concessionally at 15%.

WHY SMSFS ARE REGULATED

A regulated super fund is any fund that is regulated by APRA or an SMSF that we regulate. Funds must elect to be regulated.

We regulate SMSFs to safeguard retirement savings for Australians who choose to manage their own super. As an incentive for individuals to use complying super funds to save for retirement, significant tax concessions are offered to regulated funds but to be entitled to these concessions, the fund must comply with the super laws. The taxable income of a complying super fund is generally taxed at 15%. A fund that chooses not to be regulated or that loses its complying super fund status will not be eligible for these tax concessions.

HOW SMSFS ARE REGULATED


Super funds regulated by APRA are subject to prudential regulation. SMSFs are not prudentially regulated but are subject to compliance-based regulation. This approach recognises that, because the members of an SMSF are also its trustees, they are in a position to protect their own interests.

The super laws require that SMSFs have an investment strategy that must be reviewed regularly and that investments are made in accordance with that strategy. There are also restrictions on what SMSFs may invest in; investments must be permitted under the super laws as well as by the SMSF's trust deed.

Our focus is on compliance with super and tax laws. We undertake activities to check compliance in order to safeguard retirement savings, but we do not consider or provide specific guidance on the investment risk a strategy has, or how trustees should manage that risk.

Be aware that under existing super laws there is no government or industry compensation available for SMSF members who suffer losses as a result of fraudulent conduct or theft.

You should also understand that you cannot seek resolution of SMSF disputes through the Superannuation Complaints Tribunal.

 Remember, there are risks associated with the investment choices you make.

REGISTRATION PROCESS

After establishing your new SMSF, you must elect for your fund to be regulated by us. You need to do this within 60 days of establishment for your fund to be eligible for concessional tax treatment. You elect to be regulated on the same form that is used to apply for registration of your SMSF. This form also allows you to register your SMSF for goods and services tax (GST), which is required if annual GST turnover is greater than \$75,000.

Part of the registration process for your SMSF also requires you to register the SMSF members and trustees. It is important to register members correctly to avoid delays in processing rollovers from other super funds and employer contributions.

Your application to register your SMSF and your election to be regulated are processed in stages.

Initially, your SMSF will be issued an ABN and will be listed on the ABR at abr.gov.au as a super fund. Limited details about your fund will also appear on SFLU at superfundlookup.gov.au with a status: 'Election to be regulated is being processed' with an estimated completion date.

At this stage, no rollovers or super guarantee payments can be accepted by your SMSF. We conduct a risk assessment of all new SMSFs and every individual associated with it. We may contact you with regards to your application during this initial stage.

Once your application is fully processed, further fund details will appear on SFLU. Your SMSF will now be displayed as a regulated fund and the status will be updated to: 'Registered – status not determined'. This is the status allocated to all regulated SMSFs once registration of the fund, its members and trustees is complete. It takes approximately seven days for an SMSF to appear on SFLU as a regulated fund.

At this stage, the fund will be able to accept transfers, rollovers and contributions.

Your fund's status will be updated again to either 'complying' or 'non-complying' after lodgment of its first annual return. A notice of compliance will be issued at this stage if your fund is determined to be a complying fund.

OUR ROLE IN REGULATING YOUR SMSF

We aim to achieve high levels of compliance with super and tax laws and to work with you to help you meet your obligations under those laws. We help you understand your duties and responsibilities as a trustee under the law and make it as easy as possible for you to comply.

The way we administer the law includes:

- verifying whether your fund is being maintained only for purposes specified under super law, for example providing benefits for members upon their retirement
- providing information and forms to help you set up and manage your fund
- checking that you manage your fund in accordance with the super and tax laws
- implementing and maintaining systems that enable us to check your fund's compliance with super laws
- taking enforcement action when breaches of the law are detected
- checking that SMSF auditors perform their duties to the required standard.

If you make an honest mistake when trying to meet your obligations, we will work with you to correct it. Your individual circumstances will always be taken into consideration. However, trustees who fail to make a genuine effort to comply, or who set out to deliberately avoid meeting their legal obligations can face:

- losing the fund's tax concessions
- being disqualified as a trustee
- administrative penalties
- being prosecuted.

Under the *Taxpayers' Charter*, we provide you with information about your rights and obligations, as well as the service and standards you can expect from us.

If you feel you have been treated unfairly or unreasonably by us or another government department or agency and you cannot resolve the issue, you can refer the matter to the Commonwealth Ombudsman.

 For more information, visit [ombudsman.gov.au](https://www.ombudsman.gov.au)

WHAT OUR ROLE DOES AND DOES NOT INCLUDE

We have specific responsibilities as the regulator of SMSFs and administrator of tax laws. Therefore, there are some things we can do and some things we do not do.

	We can	We do not
Deciding whether an SMSF is right for you	<ul style="list-style-type: none"> ■ provide general information about SMSFs to help you decide whether an SMSF is right for you 	<ul style="list-style-type: none"> ■ tell you if an SMSF is the best way for you to save for your retirement
Setting up an SMSF	<ul style="list-style-type: none"> ■ provide information about how to set up an SMSF and the role of the trustee ■ register your election for your fund to be regulated ■ provide your fund with a tax file number (TFN), ABN and register your fund for GST (if applicable) ■ check that your fund is structured correctly 	<ul style="list-style-type: none"> ■ advise you of the best structure for your fund ■ provide your fund with a trust deed
Accepting contributions and rollovers	<ul style="list-style-type: none"> ■ check if contributions and rollovers have been made in accordance with the super and tax laws 	<ul style="list-style-type: none"> ■ advise you of the best contribution strategy for a member's circumstances
Making investments	<ul style="list-style-type: none"> ■ provide general information about investment restrictions and what your fund's investment strategy must consider ■ check that your fund's investments comply with the super laws and are consistent with your fund's investment strategy 	<ul style="list-style-type: none"> ■ provide an investment strategy for your fund ■ tell you if your investment strategy will meet the retirement needs of members ■ provide financial advice or give an opinion about the soundness of your investment decisions
Paying benefits	<ul style="list-style-type: none"> ■ check that you are complying with the super laws when you pay benefits to your fund's members ■ provide you with information about when members can access their super benefits ■ provide you with information about how benefit payments are taxed 	<ul style="list-style-type: none"> ■ advise you or fund members if accessing their super benefits is an appropriate choice for their financial circumstances
Reporting and lodging	<ul style="list-style-type: none"> ■ confirm you have lodged your fund's annual returns and check they are accurate and complete ■ check you have paid your fund's supervisory levy ■ amend your fund's income tax assessment and require payment of any tax shortfall including interest if applicable ■ remit administrative penalties for late lodgment and false or misleading statements 	

	We can	We do not
Getting advice from us	<ul style="list-style-type: none"> ■ provide information and advice about how the super laws apply ■ provide general rulings and determinations as guidance on our view of the law as the regulator of SMSFs ■ provide specific advice about how the super laws apply to your situation, for example, whether your fund would comply with the super laws if it invested in a particular financial product 	<ul style="list-style-type: none"> ■ provide binding advice on matters related to super laws
Complying with the laws	<ul style="list-style-type: none"> ■ audit your fund ■ take enforcement action that may include accepting an undertaking from you to rectify breaches ■ disqualify you as trustee ■ make your fund a non-complying fund ■ prosecute you in the most serious cases of non-compliance ■ check you have signed and retained a trustee declaration ■ target specific funds that present a risk of not complying with the law ■ check that your auditor conducts proper and adequate audits 	
Using SMSF professionals	<ul style="list-style-type: none"> ■ check that you have appointed an SMSF auditor who is independent of your super fund to audit your fund for each income year ■ report auditors to ASIC or their professional association if serious concerns are identified with their practices ■ disqualify auditors ■ provide general advice on the types of professionals you can consult and refer you to a professional association 	<ul style="list-style-type: none"> ■ recommend a specific professional ■ intervene if you have a dispute with a professional
Winding up an SMSF	<ul style="list-style-type: none"> ■ provide information about the steps you must follow to wind up your SMSF correctly ■ in some circumstances, require you to wind up your SMSF 	

Under the super laws you must appoint an independent auditor to audit your fund each year. In some cases you may also need to appoint an actuary.

Auditors and actuaries have an important role in the compliance framework of the SMSF system. They help us to regulate SMSFs by examining and forming an opinion on both the financial and compliance aspects of an SMSF. They address any issues of concern with you and if necessary notify us of contraventions or concerns using an approved form known as an Auditor/actuary contravention report (ACR).

AUDITORS

Auditors examine your fund's financial statements and assess your overall compliance with the super laws.

This includes checking that:

- your fund's investments comply with the super laws and the fund's investment strategy
- your fund is being maintained only for purposes specified under super law, for example providing benefits for members upon their retirement
- any contributions and benefit payments (income streams or lump sums) comply with super law
- you have met your lodgment and administrative obligations, such as keeping appropriate records to explain the operations of the fund.

The auditor will provide you with a written report on your fund's operations for the financial year. This report also includes an opinion on whether your SMSF has:

- fairly represented its financial position and operation results in its financial report
- complied with the relevant provisions of the super law during the financial year.

You must have an auditor's report before you lodge your fund's SMSF annual return. To meet this deadline, allow sufficient time for your auditor to conduct the audit – we recommend at least 45 days before the due date for lodgment of the annual return.

If an auditor identifies certain breaches of the super laws or if they have concerns about your fund's financial position, they will notify us by lodging an ACR.

➤ From 1 July 2013, SMSF auditors must be registered with ASIC. You will be able to check whether your SMSF auditor is appropriately registered on a public register that will be available on the ASIC website at asic.gov.au

⚠ You can make complaints about an auditor's conduct of an SMSF audit to ASIC or their professional association.

ACTUARIES

You may have to appoint an actuary and obtain an actuarial certificate if a member of your fund starts a super income stream with your fund.

If your fund wants to claim a tax exemption on some of the fund's income while it is paying a super income stream benefit, you may need a certificate from an actuary to work out the amount of exempt income from assets that support the income stream benefit payments. If you need an actuarial certificate it will be required in each year that the exemption is claimed.

An actuarial certificate is not required if, at all times during the financial year, assets of the fund are invested, held in reserve or otherwise being dealt with for the sole purpose of enabling the fund to meet its liabilities for super income stream benefits, and the only super income stream benefits being paid by the fund are in the form of:

- an account-based pension
- an allocated pension
- a market-linked pension.

If an actuary identifies any breaches of the super laws or has concerns about your fund's financial position, they will provide you with a report and notify us by lodging an ACR.

➤ For more information about actuarial certificates, refer to *Paying benefits from a self-managed super fund* (NAT 74124).

⚠ You can refer complaints about actuaries to the Institute of Actuaries of Australia.

You can pay professionals to help you manage your fund but you cannot pass on the responsibility of being a trustee.

You can use one or more SMSF professionals to help you to manage your fund, such as a tax agent, accountant, financial adviser, fund administrator or legal practitioner. If you do, it is important that you get good advice and choose a qualified professional who is right for you and your circumstances.

! Even if you use a professional, the ultimate responsibility for running the fund, making decisions and complying with super and tax laws still rests with you as trustee.

TAX AGENTS

Tax agents can help you manage your fund's tax affairs. As a trustee, you can use a tax agent to complete and lodge your fund's annual returns and provide you with tax advice for your fund.

Generally, only a registered tax agent can charge a fee for providing these services.

Tax agents can also help you understand your obligations under the tax laws and represent you in your dealings with us.

> You can check that your tax agent is registered by visiting the Tax Practitioners Board website at tpb.gov.au

! You can lodge complaints about tax agents with the Tax Practitioners Board.

ACCOUNTANTS

As a trustee, you must keep accurate accounting records that explain your fund's transactions and financial position.

An accountant can help you do this and can prepare the fund's annual statement of financial position and operating statement.

Your fund's accountant may also be your fund's tax agent and can assist you in the administration of your fund as well. However, they must not undertake the annual audit of your fund as this must be done by an independent auditor.

! You can refer complaints about accountants to your accountant's professional association.

FINANCIAL ADVISERS

A financial adviser can provide you with advice that is tailored to your fund, its objectives and the needs of the fund's members. They can help you prepare, review and update your fund's investment strategy and advise you on the types of investments you should consider, and what is allowed under the law. To provide financial advice a person must hold an Australian financial services licence (AFSL) or be an authorised representative of an AFSL licensee.

> You can check whether your financial adviser is licensed or authorised to provide this advice at asic.gov.au

! You can make complaints about licensed financial advisers to the adviser's professional association or ASIC. If you cannot resolve a complaint with your financial adviser, you may be able to refer the matter to the independent dispute resolution service provided by the Financial Ombudsman Service at fos.org.au

FUND ADMINISTRATORS

A fund administrator can help you manage the day-to-day running of your fund, and meet your annual reporting and administrative obligations. However, a fund administrator is not a trustee and the ultimate responsibility for all matters relating to the SMSF still rests with you.

The services of a fund administrator vary but typically include a range of accounting, financial, tax, and record-keeping services. They are not usually licensed to provide financial advice.

! Depending on the services provided by your administrator and whether they are members of a professional body or licensed to provide financial advice, you may be able to lodge complaints about them to their professional association or ASIC.

LEGAL PRACTITIONERS

As a trustee, you can use a legal practitioner to prepare, review and update your fund's trust deed. They can advise you whether certain actions are allowed under the law and represent you in legal proceedings. You can also seek their advice on such things as the legal implications of relationship breakdown, divorce, estate planning or disputes between trustees.

! You can refer complaints about legal practitioners to the Law Society in the relevant state or territory.

Running your own fund is complex – you must carry out the role of trustee, which imposes important legal duties on you.

An SMSF can have one to four members and each member must be a trustee or a director of the corporate trustee except in certain limited circumstances. Your role as a trustee of an SMSF is an important one. While an SMSF allows you to have direct control of your super, this added control comes with added responsibility and workload. You will need plenty of time to manage your fund and the skills and experience that enable you to make sound investment decisions.

All trustees are equally responsible for the decisions made for your fund and for ensuring that super and tax laws are complied with. You can pay a professional a fee to do the administration for your SMSF but you cannot pass on the responsibility of being a trustee.

In running your SMSF, you must allow for ongoing expenses such as professional accounting, tax, audit, investment and legal advice.

As a trustee, your obligations include:

- complying with all super and tax laws
- making sure your fund is maintained only for purposes specified under super law, for example providing benefits for members upon their retirement
- preparing and implementing an investment strategy that ensures the fund is likely to meet your retirement needs
- making investment decisions that comply with super and tax laws and the trust deed of your fund
- considering insurance requirements for fund assets and members
- accepting contributions and paying benefits (income streams or lump sums) in accordance with super and tax laws
- appointing an independent auditor for each income year
- undertaking administrative tasks such as lodging annual returns
- making sure new trustees sign the *Trustee declaration* (NAT 71089)
- notifying us of any changes to your fund's structure or contact details within 28 days
- keeping comprehensive records of all matters about the operation of your fund.

➤ For more information about your duties and responsibilities as trustee, refer to *Running a self-managed super fund* (NAT 11032).

TERMS WE USE

Auditor/actuary contravention report (ACR)

Auditors and actuaries use an *Auditor/actuary contravention report* (NAT 11239) to notify us of breaches of the super laws or concerns about an SMSF's financial situation.

Australian business number (ABN)

An ABN is a unique identifying number issued to all entities, including SMSFs, that are registered in the Australian Business Register (ABR). This unique number allows an SMSF to identify itself to government and other businesses.

Australian Business Register (ABR)

The ABR is a comprehensive register of information provided by businesses and other entities when they register for an ABN. The main objective of the ABR is to make it easier for these entities to interact with government. This is achieved, in part, by the use of ABNs as unique identifiers.

Binding advice

Binding advice commits us to apply the law in a stated way. It can be provided for tax laws, but there is no provision for binding advice under super laws. It can be provided as a private ruling about how a tax law applies or would apply to your circumstances, or as a public ruling.

Complying SMSF

A complying SMSF is a fund that is regulated by us and has been issued with a notice of compliance because it complies with the super laws. Complying SMSFs qualify for a concessional tax rate of 15%.

Enforceable undertaking

An enforceable undertaking is a written agreement between the trustees of an SMSF and us. It outlines the steps the trustees will take to rectify a breach of the super laws.

Non-complying SMSF

A non-complying SMSF is an SMSF for which we have issued a notice of non-compliance to the trustees of the fund because they have not complied with the super laws. For a previously complying SMSF to become a non-complying fund, we must issue a notice of non-compliance to the trustees. Non-complying funds do not qualify for concessional tax rates. The taxable income of a non-complying fund is taxed at a rate of 45%.

Non-regulated fund

A super fund is a non-regulated fund if the trustee or trustees of the fund have not elected to be regulated. A non-regulated fund cannot be a complying fund unless it is exempt from regulation. Some public sector super schemes are exempt from regulation.

Notice of compliance

We will issue a notice of compliance if we find that the trustees of an SMSF have complied with the super laws. This determination may only be made after an SMSF annual return has been lodged.

Notice of non-compliance

We will issue a notice of non-compliance if we determine that the trustees of an SMSF have not complied with the super laws and, after considering all relevant circumstances, we consider it to be appropriate to issue a notice of non-compliance. Non-complying funds do not qualify for concessional tax rates.

Super Fund Lookup (SFLU)

This website contains publicly available information about all super funds that have an ABN. You can use SFLU to view the fund's complying status and contact details. SFLU is used by APRA funds to check an SMSF's eligibility to receive transfers or rollovers. An SMSF may be removed from SFLU if we have concerns about the fund's regulatory or complying status.

